IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

Bail Appl..No. 5117 of 2007()

CRIME NO.260/07 OF SAKTHIKULANGARA POLICE STATION

: PETITIONER/3RD ACCUSED

THRITHEEPKUMAR, AGED 32 YEARS,
S/O. SIVANANDAN,KALACHAZHIKATHU KIZHAKKETHIL,
SEKTHIKULANGARA, KAVANADU P.O.,
KOLLAM.

BY ADV. SRI.GEORGE SEBASTIAN

RESPONDENTS:

S.I. OF POLICE,SAKTHIKULANGARA
POLICE STATION,REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5117 of 2007

Dated this the 22nd day of August, 2007

ORDER

Application for anticipatory bail. The petitioner is the 3rd accused. He along with co-accused (there are altogether 11 accused persons) faces allegations, inter alia, under Section 452 r/w 149 I.P.C. The crux of the allegations is that the accused persons including the petitioner who is also one of the accused named in the F.I.R were members of an unlawful assembly and in prosecution of the common object of the unlawful assembly had trespassed into a restaurant of the defacto complainant. They allegedly indulged in wanton acts of mischief and violence inside the restaurant. The co-accused have already surrendered and have been enlarged on bail. The petitioner has come to this Court claiming anticipatory bail under Section 438 Cr.P.C.

2. The learned counsel for the petitioner submits that the petitioner herein is innocent. He has a further contention that Section 452 I.P.C, the only non bailable offence alleged, will not be attracted in as much as the premises in which the incident occurred is not a house but only a restaurant.

3. The application is opposed by the learned Public Prosecutor . The short submission of the learned Public Prosecutor is that there are no circumstances justifying the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor . I am unable to find any features in this case which would justify the invocation of the discretion under Section 438 Cr.P.C. This is an eminently fit case where the petitioner also, like the other co-accused, must surrender before the Investigating Officer or the learned Magistrate having jurisdiction. I find no merit in the contention that incident inside a restaurant will not attract complicity under Sections 442 and 452 I.P.C.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-